

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DOUGLAS SEARSON, individually and on  
behalf of all others similarly situated,

Plaintiffs,

-against-

**ORDER**

CV 07-3909 (DRH)(ARL)

CONCORD MORTGAGE CORP., d/b/a CMC  
DIRECT,

Defendant.

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**LINDSAY, Magistrate Judge:**

Before the court is the defendant's motion to compel Bienvenido Franco, an opt-in plaintiff who resides in Florida, to appear for deposition in the Eastern District of New York and to compel the named plaintiff, Douglas Searson, to provide copies of the documents requested in the defendants' Second Request for the Production of Documents in this putative collective action brought pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.* and the New York Wage and Hour Law. Plaintiff opposes the application by letter dated June 17, 2008. Plaintiff contends that the discovery sought by the defendants is improper at this stage because the class has not been conditionally certified. For the reasons set forth below, the court agrees that this discovery is premature and thus the defendant's application is denied.

This court has already explained that class discovery is to be deferred pending conditional certification. See Order, dated April 8, 2008. The plaintiff has just recently filed a motion with the district court requesting leave to move for conditional certification. Thus, there has not yet been a conditional certification of the class. Defendants' application makes clear that the documents sought from Searson are relevant only to the question of whether he is a proper representative of the class which is an issue reserved for the second stage of the certification process. In addition, given that the defendant's have withheld the production of documents and other discovery pending determination of the certification question, the request to depose Franco is premature. Accordingly, the motion to compel is denied.

Dated: Central Islip, New York  
June 26, 2008

**SO ORDERED:**

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/s/  
ARLENE R. LINDSAY  
United States Magistrate Judge